

TUONG K. NGUYEN)
 Claimant)
 VS.)
) Docket No. 196,787
THE BOEING COMPANY)
 Respondent)
 AND)
)
AMERICAN MANUFACTURERS MUTUAL)
 Insurance Carrier)

1. Did claimant suffer personal injury by accident?
2. Did claimant's accidental injury arise out of and in the course of his employment?

3. What is the nature and extent of claimant's disability, if any?
4. Is claimant entitled to unauthorized and future medical benefits?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the Award should be affirmed in all respects.

Findings of Fact

1. On October 25, 1994, claimant was found on the bench of a break room table with blood on his face between his eyes. The break area was near claimant's work area. There was no blood at the work area or between the work area and the bench. The only blood was on the bench of the break table. There were no tools on the floor in the work area or break area.

2. Claimant was taken to St. Joseph Medical Center's emergency room. At the deposition of March 10, 1995, claimant testified he slipped, fell, and hit his nose on a tool. At the regular hearing of June 12, 1997, claimant testified he did not recall the accident. The emergency room records indicate claimant was not unconscious or confused and give a history of a slip and fall at work:

Patient complains of falling with an injury to the head approximately minutes prior to arrival. The patient was not unconscious. The patient has had no confusion since the injury. There has been no dizziness. There has been no nausea. There has been no vomiting. There has been no seizure activity. The injury reportedly occurred while at work. Patient also complains of laceration to bridge of nose with nosebleed. States his safety glasses broke and cut his face when he fell. Also complains of neck pain and back pain.

3. At the emergency room, claimant was treated for a fractured nose, a 1-centimeter laceration on the nose, and a 1-centimeter laceration on the left cheek. The emergency room records suggest there was no indication of a more serious head injury:

The current exam is not consistent with acute intracranial hemorrhage or other conditions requiring immediate intervention.

4. The record does not support a claim for permanent physical impairment from the physical injury of October 25, 1994.

5. Beginning November 1994, claimant saw and was treated by a number of psychiatrists and psychologists for psychological problems which he claims stem from the injury at work. These include memory loss, confusion, loss of ability to speak English, and inability to follow directions. Claimant has exhibited unusual and sometimes bizarre behavior which he contends result from his injury at work.

6. Two experts linked claimant's psychological/psychiatric problems to claimant's physical injury. Dr. Mukhtar H. Shah, a psychiatrist who treated claimant for an extended period, diagnosed post-traumatic stress disorder. He also acknowledged the possibility claimant was malingering. In fact, he considered malingering to be the second most likely diagnosis. Dr. George Dyck, also a psychiatrist, diagnosed Ganser's syndrome. Dr. Dyck noted certain errors in the testing which appeared to be purposeful errors. He concluded, however, that it was not malingering but an unconscious, but purposeful, error in the responses as a type of conversion reaction. Dr. Dyck did not agree with Dr. Shah's diagnosis of post-traumatic stress disorder.

7. In contrast to Dr. Shah and Dr. Dyck, four experts testified claimant is simply malingering. Dr. Richard J. Cummings examined claimant to evaluate the dizziness claimant exhibited. After seeing videotapes of claimant working at home, Dr. Cummings concluded he had been completely "duped" by claimant. Dr. Cummings did not evaluate the psychological problems but, as to the dizziness, he concluded claimant was malingering.

8. Dr. Marc A. Quillen, a clinical psychologist and clinical neuropsychologist, concluded claimant has neither post-traumatic stress disorder nor Ganser's syndrome. Dr. Quillen testified he had looked at every possible explanation for claimant's behavior and concluded malingering was the most logical answer. He found nothing which would point to a brain injury.

9. Dr. Mitchel A. Woltersdorf, a neuropsychologist, diagnosed malingering and, in effect, insisted the claim was ridiculous.

10. The Board concludes claimant has failed to show a psychological or psychiatric condition traceable to the physical injury. The Board finds the most probable explanation for the psychological problems claimant portrayed to the health care providers is malingering.

Conclusions of Law

1. Claimant has the burden of proving his/her right to an award of compensation and of proving the various conditions on which that right depends. K.S.A. 44-501(a).

2. Claimant has proven, and the Board finds, claimant suffered a temporary physical injury arising out of and in the course of his employment.

3. Claimant has failed to prove he suffered any permanent physical functional impairment or disability as a result of the accident and temporary injury he suffered at work.
4. Claimant has failed to prove psychological or psychiatric injury traceable to the temporary physical injury. See, Gleason v. Samaritan Home, 260 Kan. 970, 926 P.2d 1349 (1996).
5. Questions regarding reimbursement for overpayment of medical expenses or temporary total disability benefits must be addressed by the Workers Compensation Director in accordance with K.S.A. 44-534a(b).

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge John D. Clark on February 10, 1998, should be, and the same is hereby, affirmed.

The Appeals Board approves and adopts all other orders in the Award that are not inconsistent herewith, including the order for payment of expenses by claimant personally.

IT IS SO ORDERED.

Dated this ____ day of August 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Andrew E. Busch, Wichita, KS
Frederick L. Haag, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director